

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: 5:10-CR-00292-BR

UNITED STATES OF AMERICA

v.

SCOTT GORMAN

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ORDER

This matter is before the court on defendant's 21 February 2012 "petition to amend restitution order."

On 6 December 2010, the court sentenced defendant to a term of imprisonment and ordered him to pay restitution to named victims in the amount of \$162,601.69. (DE # 27, at 2, 5.) The court ordered the payment of restitution "due and payable in full immediately." (Id. at 6.) "However, [the court further ordered,] if the defendant is unable to pay in full immediately, the special assessment and restitution may be paid through the Inmate Financial Responsibility Program [(“IFRP”)]." (Id.) In his petition, defendant states that the Bureau of Prisons (“BOP”) is requiring him to pay \$300.00 per quarter towards his restitution through the IFRP, when his prison pay is only \$13.00 per month. Defendant requests that the court modify the judgment to require that defendant pay through the IFRP at a rate of 50% of his quarterly earnings or \$25.00, whichever amount is greater.

The court lacks the authority to modify defendant's judgment on this basis, as he is essentially asking the court to modify the payment schedule set by the BOP under the IFRP. To challenge his IFRP payment plan, defendant must do so by filing a habeas corpus petition

pursuant to 28 U.S.C. § 2241 in the district in which he is incarcerated, after having exhausted his administrative remedies. United States v. Diggs, 578 F.3d 318, 319-20 (5th Cir. 2009).

The petition to amend restitution order is DISMISSED WITHOUT PREJUDICE.

This 3 April 2012.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge